

CHAPTER 70
CONTRACTS FOR DAIRY INSPECTION SERVICES

[Prior to 7/27/88, see 21—Ch 32]

21—70.1(192) Definitions.

“Dairy farm” means any place or location where one or more cows or goats are kept, and from which a part or all of any milk or milk product is provided, sold, or offered for sale to a milk plant, transfer station, or receiving station.

“Department” means the Iowa department of agriculture and land stewardship.

“Inspection service agreement” means the contract between the department and either a municipal corporation or private milk sanitarian in which the municipal corporation or private milk sanitarian agrees to perform the inspections required under Iowa Code chapters 190, 191, 192 and 194.

“Milk distributor” means any person who offers for sale or sells to another any milk or milk product.

“Milk hauler” means any person who transports milk or raw milk products or both to or from a receiving or transfer station.

“Milk plant” or *“receiving station”* means any place, location, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution.

“Milk producer” means any person who operates a dairy farm and provides, sells, or offers milk for sale to a milk plant, receiving station, or transfer station.

“Municipal corporation’s milkshed” means the milk plants, receiving stations and transfer stations within a municipal corporation and the dairy farms which sell milk directly to those facilities.

“PMO” means the Grade A Pasteurized Milk Ordinance with Administrative Procedures—1978 Recommendations of the United States Public Health Service, a certified copy of which shall be on file at the secretary’s office or the office of the clerk of an authorized municipal corporation.

“Private milk sanitarian” means the person who has been certified by the department to perform inspections under Iowa Code chapters 190, 191, 192 and 194, and with whom the department contracts to perform these inspections.

“Qualified personnel” means persons employed full-time by a municipal corporation who are certified by the department to perform the inspections required under Iowa Code chapters 190, 191, 192 and 194.

“Secretary” means the secretary of the Iowa department of agriculture and land stewardship.

“Transfer station” means any place, location, or establishment where milk or milk products are transferred directly from one transport tank to another.

21—70.2(192) Contracts with municipal corporations. Any municipal corporation with a dairy plant, transfer station or receiving station within its physical boundaries may apply to the secretary for authority to conduct inspections of dairy farms, milk plants, receiving stations and transfer stations within the municipal corporation’s milkshed.

21—70.3(192) Application. The application for authority to conduct inspections shall be submitted on a form(s) designated by the department, and shall set forth the municipal corporation’s milkshed.

The secretary shall, upon receipt of the application, make a finding as to whether:

1. The municipal corporation has qualified personnel to perform the inspections; and
2. The municipal corporation has promulgated regulations conforming to the PMO, including establishing procedures for administrative hearings and judicial review such as provisions concerning notice, hearing officer, the hearing officer’s authority, record of hearing, rules of evidence and judicial review.

21—70.4(192) Execution of inspection service agreement. Upon a finding that the municipal corporation has met the criteria of 21—70.3 “1” and “2,” the secretary shall execute an inspection service

agreement with the municipal corporation. The inspection service agreement shall contain the terms and conditions under which the municipal corporation shall conduct the inspections and shall set forth the municipal corporation's milkshed.

21—70.5(192) Inspections and issuance of permits. When a municipal corporation has entered into an inspection service agreement with the department, the municipal corporation shall be authorized to conduct inspections of those dairy farms, transfer stations, milk plants and receiving stations within its milkshed as described in the inspection service agreement. The municipal corporation is authorized to issue permits under Iowa Code section 192.107 when the municipal corporation has entered an inspection service agreement with the department.

21—70.6(192) Frequency of inspections. After the issuance of a permit under Iowa Code section 192.107, the municipal corporation shall inspect each dairy farm and transfer station at least once every six months, and shall inspect each milk plant and receiving station at least once every three months. When the municipal corporation finds a violation of any of the requirements set forth in Iowa Code chapter 192, the municipal corporation shall conduct a second inspection after time deemed necessary to remedy the violations, but not before three days from the previous inspection. The reinspection shall be used to determine compliance with these sections. When the municipal corporation finds any violation of the same requirements of the same sections on such reinspection, the municipal corporation shall take action to suspend the permit in accordance with Iowa Code section 192.107 or initiate an action in district court under Iowa Code section 192.146, or both.

21—70.7(192) Inspection report. The municipal corporation shall give one copy of the inspection report to the operator or other responsible person to be posted in a conspicuous place on an inside wall of the establishment under inspection. The inspection report shall not be defaced and shall be made available to the secretary upon request. An identical copy of the inspection report shall be filed with the records of the municipal corporation.

21—70.8(192) Periodic review. The department may at any time, without notice, enter onto the municipal corporation's inspection facilities, make periodic reviews of any records, investigate complaints, conduct random inspections, and take any other steps which it deems necessary to determine whether the municipal corporation is in compliance with the provisions of Iowa Code chapters 190, 191, 192 and 194, these regulations, the PMO, or the inspection service agreement.

21—70.9(192) Annual survey. When the secretary determines, based upon the annual survey conducted by the department of public health under Iowa Code section 192.109, or the department's own periodic review under these regulations, that the municipal corporation has acted in a manner inconsistent with Iowa Code chapters 190, 191, 192, and 194, these regulations, the PMO or the inspection service agreement, the secretary may revoke the agreement pursuant to 21—70.29(192). When the secretary determines, based upon the foregoing, that the municipal corporation is in compliance with the provisions of Iowa Code chapters 190, 191, 192, and 194, these regulations, the PMO and the inspection service agreement, the secretary shall accept the municipal corporation's administration of these provisions within the jurisdiction involved.

21—70.10(192) Complaints. When the department receives any complaints concerning the production of dairy products within the municipal corporation's milkshed with which it has contracted, it shall forward the complaint to the municipal corporation for investigation and disposition. The municipal corporation shall report to the department as to the disposition of the complaint.

21—70.11(192) Assumption of inspection duties upon revocation. When the inspection service agreement is revoked, the department shall assume responsibility for inspections within the municipal corporation's milkshed, and any unearned license fees collected by the municipal corporation shall be paid to the department on a prorated basis.

21—70.12(192) Assignment. The inspection service agreement shall not be assigned without the prior written consent of the department.

21—70.13(192) Revocation procedure.

70.13(1) Upon a finding that the municipal corporation has acted in a manner inconsistent with the provisions of Iowa Code chapters 190, 191, 192, and 194, these rules, the PMO and the inspection service agreement, the department may initiate proceedings to revoke the inspection service agreement. To initiate these proceedings, the department shall send a notice of proposed revocation in writing to the municipal corporation by certified mail, return receipt requested. The notice shall specify the grounds upon which the revocation is based, including the specific statute, rules or terms of this agreement which the department has found to have been violated, and shall state that the inspection service agreement shall be revoked unless the municipal corporation informs the department that it desires a hearing on the proposed revocation pursuant to rule 21—2.2(17A,159).

70.13(2) The municipal corporation shall file the request for hearing with the department within 14 days of its receipt of the notice of revocation. Filing will be deemed complete on receipt by the department or upon mailing if the date of mailing is established by a legible United States Postal Service postmark. The date of mailing may also be established by affidavit or certificate of service signed by an attorney. Upon receipt of the municipal corporation's request for hearing, all further proceedings concerning the revocation of the inspection service agreement shall be governed by rule 21—2.2(17A,159).

21—70.14(192) Contracts with private sanitarians. When the department finds that circumstances exist under which the inspections of dairy farms, milk plants, receiving stations and transfer stations under Iowa Code section 192.103 could be performed by a private milk sanitarian, it may enter an inspection service agreement with a private milk sanitarian.

21—70.15(192) Inspection service agreement. Upon a finding that the private milk sanitarian is qualified to perform the inspections, the department may execute an inspection service agreement pursuant to Iowa Code chapter 28E with the private milk sanitarian. The inspection service agreement shall contain the terms and conditions under which the private milk sanitarian shall conduct the inspections.

21—70.16(192) Private sanitarian's authority. The authority of the private milk sanitarian to perform inspections derives solely from the department's rules and the inspection service agreement, and these inspections shall be under the supervision and control of the department. When a private milk sanitarian has entered an inspection service agreement with the department, the private milk sanitarian shall be authorized to conduct inspections of any dairy farms, transfer stations, milk plants and receiving stations described in the inspection service agreement and shall report all findings to the department. The private milk sanitarian shall not inspect any facility not listed in the inspection service agreement without the prior written approval of the department.

21—70.17(192) Qualification for Grade A permit. The private sanitarian shall notify the department of those producers whom, after inspection, it recommends for qualification for a Grade A permit.

21—70.18(192) Compliance. The private milk sanitarian shall perform these inspections under the supervision of the department in full compliance with and under the applicable provisions of Iowa Code chapters 190, 191, 192, and 194, these rules, the PMO, and the inspection service agreement.

21—70.19(192) Cooperation. The private sanitarian shall cooperate with state milk sanitation rating officers and laboratory survey officers certified by the United States Public Health/FDA in conducting these inspections.

21—70.20(192) Frequency of inspection. After the department has issued a permit under Iowa Code section 192.5, the private sanitarian shall inspect each dairy farm and transfer station at least once every six months, and shall inspect each milk plant and receiving station at least once every three months.

21—70.21(192) Violations.

70.21(1) When the private milk sanitarian finds a violation of any of the requirements set forth in Iowa Code chapter 192, the private milk sanitarian shall conduct a second inspection after a time deemed necessary to remedy the violations, but not before three days from the previous inspection. The reinspection shall be used to determine compliance with these sections.

70.21(2) When the private milk sanitarian finds any violations of these same requirements upon reinspection, it shall notify the department within 24 hours of the reinspection of the violations, for action concerning the permit under Iowa Code section 192.107 and rule 21—68.11(192,194) of the agriculture and land stewardship department's rules. The private milk sanitarian shall not take any action itself concerning the permit. The department shall notify the private milk sanitarian of any action taken under section 192.107 concerning the permit.

21—70.22(192) Periodic review. The department may conduct a periodic review of the manner in which the private milk sanitarian conducts inspections under the inspection service agreement. The periodic review may include entering without notice the private milk sanitarian's inspection facilities, examining books and records, investigating complaints, conducting random inspections, and other steps it deems necessary to determine whether the private milk sanitarian is in compliance with the provisions of Iowa Code chapters 190, 191, 192, and 194, these rules, PMO and the inspection service agreement.

21—70.23(192) Issuance of permits. The department will, upon the recommendation of the private milk sanitarian, issue Grade A permits by forwarding the permit to the private milk sanitarian for distribution to those milk producers qualifying for the Grade A permits.

21—70.24(192) Payment. The department shall pay the private milk sanitarian at a rate to be negotiated between the private milk sanitarian and the department. The private milk sanitarian shall request payment upon the voucher form designated by the department. Payment will be made in the month subsequent to the inspections for which payment has been requested.

21—70.25(192) Additional inspections. The department may allow the private milk sanitarian to conduct inspections outside the area described in the inspection service agreement when the private milk sanitarian submits a written request to conduct such additional inspections, and the department finds that allowing such additional inspections would help fulfill the purposes of Iowa Code chapters 190, 191, 192, and 194. In the event that such authorization is granted, the department shall set forth the additional facilities which the private milk sanitarian is to inspect.

21—70.26(192) Assignment. The inspection service agreement may not be assigned without the prior written consent of the department.

21—70.27(192) Independent contractor. The private milk sanitarian will be an independent contractor and the private milk sanitarian and its officers, agents and employees will not be considered officers, agents or employees of the state of Iowa and the department. The private milk sanitarian shall procure and maintain workers' compensation insurance and shall furnish the department with a certificate of such insurance coverage. The private milk sanitarian shall procure and maintain public liability insurance naming the department as an additional insured and shall furnish to the department a copy of the public liability policy naming the department as an additional insured.

21—70.28(192) Cancellation. The inspection service agreement with the private milk sanitarian will remain in effect for a period to be negotiated between the parties. The inspection service agreement may be canceled by either party for cause upon giving the other party notice in writing at least 90 days prior to the date of the proposed cancellation.

21—70.29(192) Revocation.

70.29(1) Upon a finding that the private milk sanitarian has acted in a manner inconsistent with the provisions of Iowa Code chapters 190, 191, 192, and 194, these rules, the PMO or the inspection service agreement, the department may revoke the inspection service agreement by sending a notice of proposed revocation in writing to the private milk sanitarian by certified mail, return receipt requested. The notice shall specify the grounds upon which the revocation is based, including the specific statute, rule or terms of the agreement which the department has found to have been violated, and shall state that the inspection service agreement shall be revoked unless the private milk sanitarian informs the department that it desires a hearing on the proposed revocation pursuant to rule 21—2.2(17A,159).

70.29(2) The private milk sanitarian shall file the request for hearing with the department within 14 days of the private milk sanitarian's receipt of the notice of revocation. Filing will be deemed complete on receipt by the department or upon mailing if the date of mailing is established by a legible United States Postal Service postmark. The date of mailing may also be established by affidavit or certificate of service signed by an attorney.

These rules are intended to implement Iowa Code chapter 192.

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